IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/6/2006

C O R A M

THE HONOURABLE Mr.JUSTICE P.K.MISRA

A N D

THE HONOURABLE Mr.JUSTICE M.JAICHANDREN

L.P.A.No.106 of 2002

1. Shanmugham (died)
2. Menakshi
3. Shanti
4. Pachiammal
5. P.Elumalai
6. P.Arumugam
7. Minor Thilagavathi
8. Minor Revathi
9. Minor Sumathi.
10. S.Padmavathi
11. S.Vedavinayagam
12. S.Ramesh
13. S.Omprakash @ Prakash ... Appellants/Plaintiff

(Appellants 10 to 13 brought on record as LRs of the deceased first appellant vide order of Court dated 20/6/2006 made in C.M.P.Nos.13762 and 13763 of 2006).

Vs

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1. Parvathi

2. Selvaraj

3. Chandran

4. Gurusami

5. Sundari ... Respondents/Defendants

Letters Patent Appeal against the judgment and decree in O.S.No.212 of 1984 on the file of the Sub-Court, Poonamallee dated 19/8/1986 and confirmed by this Court in A.S.No.111 of 1987 dated 10/3/2000.

For appellants ... Mr.Muthappan
For respondents ... Mr.V.Chandrakanthan

J U D G M E N T

(Judgment of the Court was rendered by Mr.JUSTICE P.K.MISRA)

The case of the appellants/plaintiffs is that on 9/3/1980, the respondents/defendants had entered into an agreement to sell the suit property in favour of the appellants for a sum of Rs.96,450/-. On the said date, the defendants had received a sum of Rs.20,000/- from the plaintiff. On the date of agreement of sale, the appellants were put in possession of the suit property. Subsequently, it is stated that the defendant had received a further sum of Rs.450/- on 10/3/1980 and passed a receipt for the same. Further on 22/6/1980, the defendant through her son had received a sum of Rs.15,000/- from the plaintiffs and the same was endorsed by her son. It is also stated that the plaintiff had paid certain other amounts. Ultimately, the plaintiffs had issued a notice dated 20/2/1981, calling upon the defendants to remove the fence and the trees except mango trees, but the defendants did not send any reply notice. Thereafter, the suit has been filed for specific performance of contract.

2. Apart from other findings recorded by the+ trial Court, the Trial Court under issue No.6 held that the suit was barred by limitation, as it was not filed within the period contemplated under Article 54 of the Schedule to the Limitation Act. Thereafter, the appellants had filed an appeal in A.S. No.111 of 1987. The learned Single Judge has considered only the question of limitation and come to the conclusion that the suit having been filed after three years, barred by limitation. The said decision is under challenge in the present appeal.

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3. The learned counsel for the appellant first contended that since the defendant in the written statement filed on 7/7/1981 in another connected suit for injunction in O.S.No.444 of 1991 had admitted the execution of sale agreement and alleged that the plaintiffs had committed breach of contract, it can be said that cause of action for filing the suit arose on that date and therefore, the suit No.1013 of 1984 should be taken to have been filed within time. These aspects had also urged before the trial Court. The trial Court negatived this submission by referring to the evidence of P.W.1, which indicates that in August 1980 itself, the defendant had refused to execute the sale deed. Similarly, the trial Court has also referred to the evidence of P.W.3 who stated that P.Ws.1 and 3 had approached the defendant within six months from the date of initial agreement and also asked to execute the sale deed, but the defendant had refused to do. The trial Court has held that the suit should have been filed within three years from the date of the refusal and obviously the suit was barred by time.

4. The learned Single Judge has confirmed the aforesaid decision of the trial Court by coming to the conclusion that the suit has not been filed within three years period.

5. The learned counsel appearing for the appellant had relied upon a decision reported in AIR 1998 KARNATAKA 389 (NARASIMHASETTY AND OTHERS Vs.PADMASETTY) and contended that since the plaintiffs had taken possession on part performance of the agreement, the three year period of limitation would not be applicable.

6. The contention raised by the learned counsel for the appellant is not tenable. The question in the present case is not whether the present appellant had remained in possession and protection under Section 53-A of the Transfer of Property Act is available or not. The question in the present case is as to whether the suit for specific performance filed by the present appellant on 10.3.1984 can be said to be within the period of limitation. Obviously, the cause of action for filing such suit arise when the defendant specifically refused to execute the sale deed. The trial court as well as the appellate court have referred to the evidence on record and have come to the conclusion that in August, 1980, the defendant had refused to execute the sale deed and, therefore, the suit should have been filed within three years from the date of such refusal.

7. We have also independently gone through the evidence on record and we do not find any reason to differ from such conclusion arrived at by the courts below. It is thus obvious that the suit was barred by limitation. Accordingly, the present appeal is dismissed,

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however, there would no order as to costs so far as the present appeal is concerned. Consequently, the connected C.M.P.No. 7259 of 2002 is also dismissed.

mvs/dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sub-Assistant Registrar (Judicial)
   High Court, Madras.

2. The Subordinate Judge, Poonamallee (with records)

3. The Record Keeper,V.R.Section, High Court,
   Madras 104.

+ one cc to Mr.M.Muthappan, Advocate Sr.No.25811.

AK (CO)
RSM/18.8.2006

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